



P.O. BOX 23223 Oakland, CA 94623
Phone (510) 419-0120 / Fax (510) 832-1456

LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 04-May-07
Time 12:00 PM

Dated: 04-May-2007

TRANSMITTAL No: KFM-TRN-000541

Rev: 00

To: Pedro Sanchez

Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

Co/Job # 364-4347

Contract # 04-0120E4

Sub/Supplier:

Sub/Supplier No:

Subject: KFM to Disputes Review Board Letter 0002; NOPC #05-031707
Referral to the Board

Special Provis. (SP) REF: 5-1.15
Standard Spec. (SS) REF:

RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items:

☒ Attached

☐ Via Fax

☐ Contract Plans/Specs

☐ Certs of Compl./Samples

☐ Working Drawings

☐ Drawings/Calculations

☐ Schedule

☐ WQCP and/or Addenda

☐ Change Order

☐ Progress Estimate Request

☐ Weekly Welding Reports

☒ Copy of Letter

☐ Payroll Information

☐ CWR Procedure

Item	Date	Copies	Description	Pages
01	04-May-2007	0	KFM to Dispute Review Board Letter 0002; NOPC #5-031707-Referral to Board	

These are transmitted as checked below:

☐ For Approval

☐ For Review/Comment

☐ Return For Correction

☒ For Your Use

☐ As Requested

☒ For Information

Remarks:

CC:

Submitted By:

Meda Schultz

(KFM Staff Member – Originator of Transmittal)

Checked & Sent By:


Contract Admin/DCS Staff



May 04, 2007

Serial Letter: KFM-DRB-LTR-000002

Dispute Review Board (DRB)
1122 Ferguson Road
Sebastopol, CA 95472

Attention: Mr. Warren Bullock, DRB Member

Reference: SAS E2/T1 Foundation Project
Caltrans Contract No. 04-0120E4
KFM Job No. 364/4347

Subject: NOPC #05-031707 - Referral to the Board

Dear Warren,

Please find attached, Notice of Potential Claim #05-031707. This NOPC remains in dispute and in accordance with Section 5-1.15, "Disputes Review Board" of the Special Provisions, KFM hereby refers this NOPC to the Disputes Resolution Board. KFM requests that a hearing on this matter be scheduled in accordance with Section 5-1.15, "Disputes Review Board".

If you have any comments or questions, please contact this office.

Sincerely,
KIEWIT/FCI/MANSON, a JV

Lee Zink
Project Director

cc: Mr. Richard Lewis – DRB Member
Mr. Ronald Maasberg – DRB Member
Mr. Pedro Sanchez – Resident Engineer

Attach: KFM Letter #266 – Protest to State Response presented in CTL #3053
State Letter #3053 – Response to Supplemental Notice of Potential Claim
Transmittal #523 – Supplemental Notice of Potential Claim #05-031707
Transmittal #513 – Initial Notice of Potential Claim #05-031707



May 04, 2007

Serial Letter: KFM-LET-000266

California Department of Transportation
SFOBB – E2T1 Project
333 Burma Road
Oakland, CA 94607

Attention: Pedro Sanchez

Reference: SAS E2/T1 Foundation Project
Caltrans Contract No 04-0120E4
KFM Job No. 364/4347
State Letter #05.003.01-003053, dated April 19, 2007

Subject: NOPC #05-031707 - Protest to State Response

Dear Pedro:

KFM has received State Letter #3053, dated April 19, 2007, regarding NOPC #5-031707. KFM disagrees with the State's analysis of this potential claim since the requested additional compensation and time associated with NOPC #5 would be a result of State directed changes during the Integrated Shop Drawing ("ISD") process that require the issuance of revised contract drawings and Contract Change Order ("CCO").

CCO#41 – Incorporation of ISD Resolutions Scope

State Letter #1485, dated June 30, 2006, directed KFM to proceed with the construction in accordance with the approved ISD revisions and all related RFI responses. The State ensured that payment associated with applying the approved ISD conflict resolutions and RFI responses to the construction would be addressed in Contract Change Order #41.

This letter was written in response to KFM letter #166 (Pier E2 Footing and Pier ISD – Request for Change Order) and KFM letter #172 (Pier T1 Footing ISD – Request for Change Order). In each of these letters, KFM requested that a CCO be issued in accordance with Standard Specification 4-1.03, "Changes", and that revised contract drawings be issued to illustrate the ISD resolutions in the Project Plans. KFM letter #172, dated June 29, 2006 further requested that,

"...KFM has incorporated the revised plan sheets into the ISDs as required in CCOs #17 and 18. However, the physical changes to the work were not included in CCOs #17 and 18 and must now be addressed in the subject change order request. Some of these changes may already be incorporated into the work in progress and KFM expects that full compensation for the changes will be included in the forthcoming change order."

KFM-LTR-000266

May 4, 2007

Page 2 of 5

State Letter #1485, dated June 30, 2006, in response to both KFM letters #166 and 172, did not deny KFM's request for compensation for these particular changes but instead confirmed that all payment for extra work and changes in contract item quantities associated with applying the ISD resolutions would be addressed in CCO #41.

In good faith, KFM has continued to plan and construct the work incorporating all known ISD resolutions as directed in State Letter #1485.

Nine months later, on March 13, 2007, State Letter #2958 was issued as a second response to KFM letter #172, dated June 29, 2006. In it, the State denied KFM's request for compensation for ISD changes as previously depicted in those drawings issued under CCOs #17 and 18 and continues with their assertion that these described changes to the construction were compensated for under CCO #29, albeit this scope of work was not completely known by KFM at the time of CCO #29's execution and was outside of the scope of the base contract and previous CCOs.

It was this event, on March 13, 2007, that initiated the filing of this NOPC #5 in accordance with Standard Specification 9-1.04, "Notice of Potential Claim" and has prompted the referral of this claim to the Disputes Review Board in accordance with Standard Specification 5-1.15, "Disputes Review Board".

CCOs #17 and 18 Scope

State Letters #150 and 180 issued in the fall of 2004 provided 27 draft revised project plans for the construction of Pier T1. KFM was directed to proceed with the work to modify the footing at Pier T1, in accordance with the attached drawings. Specific direction was included to incorporate the described changes into the "conflict set" of the specified ISD submittal. Payment for the work associated with this direction was to be made under pending CCOs #17 and 18.

Throughout the balance of 2004, work continued to incorporate the changes into ISD submittals as directed. However, the physical construction of Pier T1 affected by these changes was not slated to begin until late-2005.

Inherent in the specified ISD process was the fact that the contract drawings would likely have to be revised again after the conflicts were identified and resolved through the ISD and RFI process. And, in fact, 16 of the original 27 draft project plans, noted above, were ultimately revised and reissued along with nine new drawings under CCO #41 on September 13, 2006, approximately two years after the first set of new and revised Project Plans were issued in State Letters #150 and 180.

As history will tell, the contract was temporarily terminated on January 5, 2005. On July 29, 2005, the State revoked this temporary termination. During this period, KFM and the State negotiated and executed CCOs #17 and 18 to compensate KFM for a much reduced scope compared to that originally described in State letters #150 and 180. As written in CCOs #17 and 18, KFM was directed to,

"Pursuant to Section 5-1.0105, "Integrated Shop Drawings", of the Special Provisions, incorporate the details shown on the following revised Project Plan sheets into the initial set of Integrated Shop Drawings (ISDs) that indicate all conflicts."

KFM-LTR-000266

May 4, 2007

Page 3 of 5

Both Change Orders go on to state that,

“This agreed sum constitutes full compensation, including all markups, for revising the initial set of ISDs per the Project Plan sheets listed in this Change Order, estimating, RFI preparation, project management and administration, meetings and coordination, checks and reviews, and schedule impacts associated with this Change Order.”

As evidenced by the written language of the final executed CCOs #17 and 18, the agreed to scope and compensation of the change was limited to the incorporation of the details shown into the ISD submittal only.

The executed change orders did not, in fact, address or provide compensation for the incorporation of the details shown into the construction of Pier T1.

State Letter #3053, dated April 19, 2007, in response to KFM’s Supplemental NOPC, contends that the drawings included in CCOs #17 and 18 were made part of the Project Plans not only in so far as they relate to the completion of the ISD submittal but also for use in construction of Pier T1. The State goes on to assert that KFM agreed to this interpretation by signing CCOs #17 and 18.

KFM disagrees with this reasoning entirely, based upon the above discussion. Hence, it has been and continues to be KFM’s position that the drawings associated with CCOs #17 and 18 have only ever been incorporated into the contract as they relate to the ISD work described in Special Provision Section 5-1.0105, “Integrated Shop Drawings”. They have not, as of this date, been incorporated into the contract for construction purposes.

CCO#29 – Termination and Restart Change Order Scope

Although, the State agrees that KFM is entitled to compensation for the effort to incorporate details changes shown in CCOs #17 and 18 into the construction of Pier T1 and that KFM was not paid for this effort under CCOs #17 or 18, it is the State’s claim that CCO #29 paid for any and all known issues at the time this CCO was signed by KFM on December 2, 2005. This is a much broader scope than is written into the language of CCO #29 as signed by KFM.

As written in executed CCO #29, compensation was provided only:

“...to complete the work as described in the base contract, previous CCOs and this CCO.”

“It is the intent of the parties that the compensation provided in this CCO, together with all other CCOs issued prior to the date of acceptance of this CCO and the base contract, will resolve all issues related to restarting the contract and establish a new contract price for the completion of the contract, except as listed in Section 4.0 of this CCO.”

Therefore, the compensation provided was limited to those items associated with restarting the contract as described in the base contract and previously executed CCOs.

Other than the exact scope provided in previously issued CCOs, no changes to the original contract scope were included in CCO #29. Additionally, no new or revised Project Plans were included in the scope of CCO #29. KFM would have expected that scope changes to cover any previously known issues, beyond those related to restarting the base contract, previous CCOs and CCO #29, would have been described in the scope language and/or new and revised Project Plans as necessary.

At the time CCO #29 was signed on December 2, 2005 there remained many previously known issues outside the scope of the base contract, previous CCOs and CCO #29. The following lists many of these issues and their respective administrative status:

- 1) UT of the PJP Welds – settled in CCO#31s0 and S1 on 3/28/06 and 10/12/06
- 2) Weld Codes Changes – settled in CCO#15 on 5/11/06
- 3) Isolation Material Spec Change – settled in CCO#30 on 5/12/06
- 4) T1 Bubble Curtain Change Order – settled in CCO#32 on 5/12/06
- 5) Centralizer/Seal Elimination at E2 Footing – pending CCO#14
- 6) T1 Dowel Material Spec Change – pending CCO#51
- 7) Completion of ISD Process – currently being addressed in NOPC #4

KFM views NOPC #5 in the same manner as these other previously known issues that are outside of the base contract and previous CCOs and has acted accordingly. Once changes resulting from ISD were completely described and direction from the State had been provided to incorporate the changes into the work in State Letter #1485, KFM proceeded with this changed work. KFM properly requested additional compensation for these changes in a future Contract Change Order, namely CCO #41.

In Summary...

KFM requested the issuance of a Contract Change Order to cover the cost of incorporating ISD resolutions into the construction of Pier T1 and Pier E2 in June 2006. State Letter #1485, dated June 30, 2006, ensured that compensation for the same would be forthcoming in Contract Change Order #41. As directed and in good faith, KFM proceeded with the construction accordingly and has continued since.

New and revised Project Plans issued under CCOs #17 and 18 were incorporated into the contract only as they related to the ISD effort. Agreed to compensation covered this scope of work and the accounting of this amount agrees with this scope.

CCO #29 compensated KFM only for work associated with terminating and restarting the original base contract and previous CCOs. Agreed to compensation covered this scope of work only and the accounting of this amount agrees with this scope.

KFM-LTR-000266

May 4, 2007

Page 5 of 5

State Letter #2958, issued nine months later, denied a large portion of this compensation request. This untimely response came long after KFM expended the effort to plan and incorporate the changes into the construction itself.

Draft CCO#41 was recently issued on April 16, 2007, a full 10 months after the direction to incorporate the changes was given. This draft CCO#41 continues to misrepresent the full scope of changes resulting from the ISD effort and, as such, is unacceptable to KFM.

Again, KFM disagrees with the State's analysis of this potential claim and has referred this matter to the Disputes Review Board for consideration.

Sincerely,

KIEWIT/FCI/MANSON, a JV

A handwritten signature in black ink, appearing to read 'Lee Zink', with a small 'F&M' written below it.

Lee Zink
Project Director

cc: file

DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program

333 Burma Rd.
Oakland, CA 94607
(510) 286-0538, (510) 286-0550 fax



Kiewit-FCI-Manson, JV
220 Burma Rd.
Oakland, CA 94607

Attn: Mr. Lee Zink
Project Director

April 19, 2007

Contract No. 04-0120E4
04-SF-80-13.4, 13.8
SAS T1 & E2 Foundations
SFOBB-ESSSP

Letter No. 05.003.01-003053

Subject: Response to Transmittal No. 523, Revision No. 00 (Supplemental Notice of Potential Claim #05-031707)

Dear Lee,

The Department has reviewed Kiewit-FCI-Manson (KFM) Transmittal No. 523, Revision No. 00, dated March 30, 2007, which provided the Contractor's Supplemental Notice of Potential Claim (NOPC) No. 05 regarding a request by the Contractor for additional compensation for changes to the contract plans as a result of Integrated Shop Drawing (ISD) process.

KFM's Transmittal No. 523, Revision No. 00 Supplemental Notice of Potential Claim #05-031707 has inappropriately added issues related to CCO No. 41 to the issues related to CCO Nos. 17 and 18 included in your Initial Notice of Potential Claim submitted on March 16, 2007. A Draft CCO No. 41 has been submitted for your review on April 16, 2007.

The Contractor is advised that this Supplemental Notice of Potential Claim fails to provide, 1) an itemized breakdown of individual costs and how the estimate was determined; and 2) a time impact analysis of the project schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of contract time is made as required by Section 9-1.04 "Notice of Potential Claim" of the Special Provisions. If the Contractor elects to further pursue this potential claim, please remove the issues related to CCO No. 41, and include an itemized breakdown of individual costs and a time impact analysis of the project schedule in the Final Notice of Potential Claim.

The Department understands the Contractor's position to be that "The work of incorporating the details described in CCO #17/18 draft contract plans into the final construction fell outside of the base contract scope as indicated by State Letters #150 and #180. Compensation for those detail changes was not addressed on any CCOs executed prior to the execution of CCO #29 on December 2, 2005". In addition, the Department understands that the Contractor's position to be that "CCOs #17 and 18 were executed prior to Contract restart and the amount of compensation agreed by KFM and the State was based only upon this scope of work and the accounting of this amount agrees with this scope", and that "The amount of compensation for CCO #29 was agreed upon by KFM and the State based on this scope of work and the accounting of this amount agrees with this scope. KFM was not compensated for any changes other than those describe in this scope."

Regarding CCO Nos. 17 and 18, the Department's Letters No. 150, dated August 17, 2004, and No. 180, dated September 6, 2004 directed KFM to proceed with the work to modify the footing at Pier T1 in accordance with the attached drawings. These modifications included revisions to the fender, the top plate, the pile sleeves, the wall bar reinforcement, and the concrete limits of the footing. These drawings either superseded (35R1, 36R1, etc.) or supplemented (74S1, 74S2, etc.) their corresponding sheets in the Project Plans.

Plan sheets issued with CCO Nos. 17 and 18 described the nature of the details for construction of the modified Pier T1 and stated that CCO Nos. 17 and 18 plan sheets either superseded or supplemented their corresponding sheets in the Project Plans. The Contractor agreed that the additional plan sheets provided by CCO Nos. 17 and 18 were part of the contract plans when KFM signed CCO Nos. 17 and 18 on August 1, 2005.

At the time that CCO Nos. 17 and 18 were signed the contract was being terminated. Therefore, as the Pier T1 was not currently under construction, the Department limited the payment provided for CCO Nos. 17 and 18 to work already performed by the Contractor's ISD subcontractor.

On December 2, 2006 the Contractor signed CCO No. 29 which compensated "the Contractor for direct labor, indirect labor, equipment, material, home office, G & A costs, onsite yard costs, fuel costs, equipment breakdown, escalation of equipment, materials, labor, loss of productivity, inefficiencies, and Time Related Overhead to complete the work described in the base contract, previous CCOs and this CCO." Although the Contractor was not compensated by a separate set of change orders for the work in constructing the work described in CCO Nos. 17 and 18, CCO Nos. 17 and 18 added new sheets and amended others to the contract plans. Therefore, full and final compensation for completing the work described in the base contract (which by August 1, 2005 included plan sheets provided by CCO Nos. 17 and 18) was (along with the base contract and all CCOs written prior to December 2, 2006) provided in CCO No. 29.

Based on our investigation and the information you provided, the Department finds no contractual basis to support your claim.

Please provide a response that supports agreement or disagreement with the Department's analysis of the claim. The Contractor's attention is directed to Section 9-1.04 "Notice of Potential Claim" of the Special Provisions regarding any further pursuit of this matter by the Contractor.

If you have any question or need additional information, please contact this office.

Sincerely,



Pedro J. Sanchez
Resident Engineer

SAS FOUNDATIONS E2/T1 PROJECT			
KIEWIT-FCI-MANSON A JV			
DATE	4/19/07	CO/JOB	364 4347
ROUTED TO	884	NO	04-0120E4
TO:		SPECIAL NOTES:	
KFM COPIES TO:			
EXTERNAL COPIES TO:			
SCANNED:	(Y) N	FILED TO:	E2T1-KFM-TRANS523

cc: R. Morrow
P. Sanchez
M. Woods
M. Vilcheck

file: 05.003.01, 62.001.05



P.O. BOX 23223 Oakland, CA 94623
Phone (510) 419-0120 / Fax (510) 832-1456

LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 30-Mar-07
Time 2:39 PM

Dated: 30-Mar-2007

TRANSMITTAL No: KFM-TRN-000523

Rev: 00

To: **Pedro Sanchez**
Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

Co/Job # 364-4347
Contract # 04-0120E4
Sub/Supplier:
Sub/Supplier No:

Subject: Supplemental Notice of Potential Claim #05-031707

Special Provis. (SP) REF:
Standard Spec. (SS) REF: 9-1.04
RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items: ☒ Attached ☐ Via Fax

- | | | |
|--|--|---|
| <input type="checkbox"/> Contract Plans/Specs | <input type="checkbox"/> Certs of Compl./Samples | <input type="checkbox"/> Working Drawings |
| <input type="checkbox"/> Drawings/Calculations | <input type="checkbox"/> Schedule | <input type="checkbox"/> WQCP and/or Addenda |
| <input type="checkbox"/> Change Order | <input type="checkbox"/> Progress Estimate Request | <input type="checkbox"/> Weekly Welding Reports |
| <input type="checkbox"/> Copy of Letter | <input type="checkbox"/> Payroll Information | <input type="checkbox"/> CWR Procedure |

Item	Date	Copies	Description	Pages
01	30-Mar-2007	0	Form CEM-6201B - Supplemental Notice of Potential Claim #05-031707	

These are transmitted as checked below:

- | | | |
|---------------------------------------|--|--|
| <input type="checkbox"/> For Approval | <input checked="" type="checkbox"/> For Review/Comment | <input type="checkbox"/> Return For Correction |
| <input type="checkbox"/> For Your Use | <input type="checkbox"/> As Requested | <input type="checkbox"/> For Information |

Remarks:

Attached, please find form CEM-6201B - Supplemental Notice of Potential Claim #05-031707.

If you have any comments or questions, please contact this office.

CC:

Submitted By:

Meda Schultz

(KFM Staff Member - Originator of Transmittal)

Checked & Sent By:

Contract Admin/DCS Staff



Specification 9-1.04 – Notice of Potential Claim

Supplemental Notice #05-031707
Attachment to form CEM-6201B

A) The complete nature and circumstances of the dispute which caused the potential claim.

This dispute is a result of KFM's repeated requests to the State for the issuance of a Contract Change Order ("CCO") to compensate KFM for directed changes to the contract plans as a result of the specified Integrated Shop Drawing ("ISD") process and the State's subsequent failure to do so as required by the Contract.

Section 4-1.03, "Changes" of the Standard Specifications ("SS"), states that the Engineer can make alterations, deviations and additions to or deletions from the Contract. The second paragraph states the following:

"Those changes will be set forth in a contract change order which will specify, in addition to the work to be done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for that work. A contract change order will not become effective until approved by the Engineer."

Subsequent to the approval of the ISD submittals for Piers T1 and E2, State Letter #1485, dated June 30, 2006, was forwarded to KFM. In accordance with SS 4-1.03, "Changes", KFM was directed by this letter to proceed with the construction of Pier T1 and Pier E2 per the contract plans with design conflicts resolved in accordance with the approved ISD revisions and all related RFI responses.

This direction was given without an approved CCO in place and did not provide revised project plans; therefore, the complete nature and circumstances of such changes could not be fully understood by KFM at that time. Letter #1485 continued, "...payment for extra work and changes in the contract item quantities that may be associated with applying the approved ISD conflict resolutions and RFI responses to the construction of Pier T1 and Pier E2 shall be addressed in Contract Change Order No. 41".

KFM requested that the State issue a complete set of revised project plans to illustrate all of the conflict resolutions so KFM could analyze, price and later to communicate with and build the work.

On September 13, 2006, under State Letter #1869, the State forwarded a revised set of contract plans, "incorporating the results of the integrated shop drawings". The State ordered KFM to, "...proceed with the construction of Pier T1 and Pier E2 per the revised contract plans and that payment for the extra work and changes in contract item quantities associated with applying these revised contract plans to

the construction of Pier T1 and Pier E2 will be addressed in pending Contract Change Order #41”.

These revised contract plans were issued by the State under the premise that all changes as a result of the ISD process were fully illustrated and described. However, these plans failed to meet the State’s intended goal. They did not represent all known ISD resolutions and those that were represented, were described minimally – essentially resulting in a ‘red-line’ of the original contract plans. Therefore, the complete nature and circumstances of the changed work as shown in the ISD submittals and as ordered by the State for the Pier E2 and T1 footings had not been properly described.

Although KFM was ordered to proceed with these incomplete changes over nine months ago, a complete set of revised contract drawings still has not been incorporated into the contract via an approved CCO#41. SS 4-1.03, “Changes”, third paragraph, beginning with the second sentence reads:

“If ordered in writing by the Engineer, the Contractor shall proceed with the work so ordered prior to actual receipt of an approved contract change order therefor. In those cases, the Engineer will, as soon as practicable, issue an approved contract change order for the ordered work ...”

The State has failed to issue CCO#41 as soon as practicable as required by Contract and KFM remains uncertain as to the complete nature and circumstances of the change.

Furthermore, the State’s assertion that these changes have been addressed in previous CCOs is contrary to the scope language and accounting for these CCOs.

As described on the face of the change orders, CCOs #17 and 18 provided compensation only for the following:

“...revising the initial set of ISDs per the Project Plan sheets listed in this Change Order, estimating, RFI preparation, project management and administration, meetings and coordination, checks and reviews, and schedule impacts associated with this Change Order.”

CCOs #17 and 18 were executed prior to Contract restart and the amount of compensation agreed to by KFM and the State was based only upon this scope of work and the accounting of this

amount agrees with this scope. KFM was not compensated for any changes other than those described in this scope.

Executed Contract Change Order #29, the restart change order, as described on the face of this CCO, provides compensation for the following:

“all direct labor, indirect labor, equipment, materials, home office, G&A costs, onsite and offsite yard costs, fuel costs, equipment breakdown, escalation of equipment, materials, labor, loss of productivity, inefficiencies, and Time Related Overhead (TRO) **to complete the work as described in the base contract, previous CCOs and this CCO.**”

“It is the intent of the parties that the compensation provided in this CCO, together with all other CCOs issued prior to the date of acceptance of this CCO and the base contract, **will resolve all issues related to restarting the contract** and establish a new contract price for the completion of the contract, except as listed in Section 4.0 of this CCO.”
(emphasis added)

The amount of compensation for CCO#29 was agreed upon by KFM and the State based on this scope of work and the accounting of this amount agrees with this scope. KFM was not compensated for any changes other than those described in this scope.

The ordered changes associated with the forthcoming CCO#41 are clearly not addressed in these previously issued CCOs. As it relates to this dispute, CCOs #17 and 18 covered only revising the initial set of ISDs and CCO#29 covered only what is described in those previous CCOs and issues related to restart. The changes required under CCO#41, although the complete nature and circumstances of the change still have not yet been fully conveyed by the State, are not addressed within the scope or accounting of these previous CCOs. The subject changes do not include revising the initial set of ISDs (this was done prior to restart), nor are they related in any way to restarting the contract. They are new changes, resulting from the as specified ISD process, that under our Contract require revised contract plans and an associated CCO.

While KFM has attempted to explain this rationale to the State on many, many occasions, the State has repeatedly failed to understand or provide valid reasoning, in the context of the scope and accounting of these previous changes, to justify their denial.

In summary, the changes pursuant to the ISD process have not been fully communicated or addressed in an approved CCO nor has a complete set of associated contract drawings been provided as requested by KFM in letters #166, 171 and 172.

KFM has sent four separate letters to the State requesting issuance of an approved CCO. They are letters #166, dated June 1, 2006, #171 and 172 both dated June 29, 2006 and most recently #246, dated March 8, 2007. None of these have resulted in the issuance of a CCO. Instead, State Letter #2958, dated March 13, 2007, in response to KFM letter #172, denied KFM's request for compensation for the incorporation of all ISD resolutions into the contract plans, effectively resulting in the filing of the Initial Notice of Potential Claim #05-031707 on March 16, 2007

B) The contract provisions that provide the basis of the potential claim.

SS 4-1.03, "Changes" provides the basis for the State's failure to issue a CCO. SS 4-1.03D, "Extra Work", provides the basis for compensation. KFM has been directed, in State Letter #1485 and 1869, to incorporate the changes to the work resulting from the specified ISD process as described in Special Provision 5-1.0105, "Integrated Shop Drawings".

This notice is being filed in accordance with Standard Specification Section 9-1.04, "Notice of Potential Claim".

C) The estimated cost of the potential claim, including an itemized breakdown of individual costs and how the estimate was determined.

Description	Estimated Cost Impact
Concrete	\$1,675,000.00
Reinforcing	\$ 333,000.00
Structural Steel	\$ 62,000.00
Total	\$2,070,000.00

This estimate was determined using limited information on direct elements only and does not include contractually allowable compensation for Contractor's overhead or other impacts not specifically addressed.

Because we have not received the complete nature and circumstances of the change, this preliminary estimate is based upon the limited scope of information KFM has received from the State to date. Upon issuance of CCO#41 and a complete and accurate set of revised contract drawings, KFM should be able to provide a more representative estimate of the impact associated with the changes to the work.

D) A time impact analysis of the project schedule that illustrates the effect on the scheduled completion date due to schedule changes or disruptions where a request for adjustment of contract time is made.

Preliminary information indicates that reinforcing work is anticipated to be delayed by approximately three weeks. Other work items, including the corbel and revised fender work will be delayed by approximately three additional weeks.

As described above, this information is preliminary. As additional information is obtained or provided by the State, a more representative analysis can be performed.



P.O. BOX 23223 Oakland, CA 94623
Phone (510) 419-0120 / Fax (510) 832-1456

LETTER OF TRANSMITTAL
SAS Foundations E2/T1 Project

Run Date 16-Mar-07
Time 4:07 PM

Dated: 3/16/2007
To: **Pedro Sanchez**
Caltrans - SAS E2/T1 Foundation Project
333 Burma Road
Oakland CA 94607
Phone: 510-286-0538 Fax:

TRANSMITTAL No: KFM-TRN-000513 Rev: 00
Co/Job # 364-4347
Contract # 04-0120E4
Sub/Supplier:
Sub/Supplier No:

Subject: Initial Notice of Potential Claim #5-031707

Special Provis. (SP) REF: 9-1.04
Standard Spec. (SS) REF:

RESUBMITTAL/SUPPLEMENTAL REF:

We are sending the following attached items: ☒ Attached

☐ Via Fax

- | | | |
|--|--|---|
| <input type="checkbox"/> Contract Plans/Specs | <input type="checkbox"/> Certs of Compl./Samples | <input type="checkbox"/> Working Drawings |
| <input type="checkbox"/> Drawings/Calculations | <input type="checkbox"/> Schedule | <input type="checkbox"/> WQCP and/or Addenda |
| <input type="checkbox"/> Change Order | <input type="checkbox"/> Progress Estimate Request | <input type="checkbox"/> Weekly Welding Reports |
| <input type="checkbox"/> Copy of Letter | <input type="checkbox"/> Payroll Information | <input type="checkbox"/> CWR Procedure |

Item	Date	Copies	Description	Pages
01	16-Mar-2007	0	Initial Notice of Potential Claim #5	

These are transmitted as checked below:

- | | | |
|---------------------------------------|--|--|
| <input type="checkbox"/> For Approval | <input checked="" type="checkbox"/> For Review/Comment | <input type="checkbox"/> Return For Correction |
| <input type="checkbox"/> For Your Use | <input type="checkbox"/> As Requested | <input type="checkbox"/> For Information |

Remarks:

Attached please find NOPC#5 - Initial Notice of Potential Claim related to KFM Letter #172 - Request for Change Order

CC:

Submitted By: Meda Schultz
(KFM Staff Member - Originator of Transmittal)

Checked & Sent By:
Contract Admin/DCS Staff

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION
INITIAL NOTICE OF POTENTIAL CLAIM
CEM-6201A (NEW 9/2002)



TO Pedro Sanchez (resident engineer)	CONTRACT NUMBER 04-0120E4	DATE 3-16-07	IDENTIFICATION NUMBER #05-031707
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This is an Initial Notice of Potential Claim for additional compensation submitted as required under the provisions of Section 9-1.04, "Notice of Potential Claim," of the Standard Specifications. The act of the engineer, or his/her failure to act, or the event, thing, occurrence, or other cause giving rise to the potential claim occurred on:

DATE: **3-13-07**

The particular nature and circumstances of this potential claim are described as follows:

Attachment Included describing nature & circumstances.

(attach additional sheets as needed)

The undersigned originator (Contractor or Subcontractor as appropriate) certifies that the above statements and attached documents are made in full cognizance of the California False Claims Act, Government Code sections 12650-12655. The undersigned further understands and agrees that this potential claim to be further considered, unless resolved, must fully conform to the requirements in Section 9-1.04 of the Standard Specifications and must be restated as a claim in the Contractors written statement of claims in conformance with Section 9-1.07B of the Standard Specifications.

Kiewit/FCI/Manson a JV
SUBCONTRACTOR or CONTRACTOR
(Circle One)

(Authorized Representative)

For a subcontractor potential claim

This notice of potential claim is acknowledged, certified and forwarded by

PRIME CONTRACTOR

(Authorized Representative)

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

KFM Transmittal #513
March 16, 2007
Initial NOPC #5-031707
Attachment to Form CEM-6201A

Narrative:

The State issued 27 draft project plans for incorporation into the work in August/September 2004. They were to be associated with CCO#17 and 18 and were forwarded to KFM under State letters #150 and #180 respectively.

These revised contract plan sheets were issued while KFM and its consultant, Norcal Structural (previously Abbas Engineering) were developing the Integrated Shop Drawings as required by Specification 5-1.105. The revised plan sheet details were incorporated into the ISD as directed by the State. The final ISD package was submitted to the State in the Spring of 2006 after project restart

The delay in producing this final package was a result of a temporary termination initiated by the State on January 5, 2005 which continued through July 29, 2005. While under temporary termination, KFM, Norcal and the State negotiated CCO#17/18 to compensate Norcal for the effort needed to incorporate the details shown into the initial set of Integrated Shop Drawings. A total of \$156,000.00 was paid to KFM/Norcal for this effort; this amount did not include any compensation for the cost of the changed work.

On July 29, 2005, the Department of Transportation issued a letter to KFM withdrawing the termination. KFM obliged itself to submit a restart schedule by August 29, 2005. This restart schedule along with the subcontractor/supplier's termination/restart proposals formed the basis of determining the total compensation paid to KFM to restart and continue the contract work.

CCO#29 was executed on December 2, 2005. Its scope was limited to only those costs associated with restarting and completing the work as described in the base contract, previous executed Contract Change Orders and CCO#29 itself. Final CCO#29 language went on to state, as pointed out in State Letter #2958, that "It is the intent of the parties that the compensation provided in this CCO, together with all other CCOs issued prior to the date of acceptance of this CCO and the base contract, will resolve all issues related to restarting the contract and establish a new contract price for the completion of the contract, except as listed in Section 4.0 of this CCO".

KFM did not provide a detailed cost/credit analysis for incorporation of the revisions shown in CCO#17/18 into the finished work since the ISD effort was never completed prior to termination or restart. An accurate analysis could not be done until the ISD effort was completed and any resulting changes to the contract drawings were made.

On June 20, 2006 after the ISD packages had been submitted and approved, the State issued letter #1485 which directed KFM to "proceed with the construction of Pier T1 and

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Pier E2 per the Project Plans with conflicts resolved in accordance with the approved ISD revisions and related RFI responses” but failed to issue revised contract plans to illustrate the same.

KFM's letter #172, dated June 29, 2006 requested a contract change order and the issuance of revised contract drawings to cover the work associated with the Integrated Shop Drawing process. Included was a request for compensation for the affects of incorporating details shown in CCO#17/18. On September 13, 2006 the State issued CCO#41 which provided 25 new revised project plans. Sixteen of these replaced drawings originally issued under either CCO#17/18. The remaining eleven of 27 drawings issued by CCO#17/18 have not been incorporated into the contract by change order for construction.

Conclusion:

The work of incorporating the details described in CCO#17/18 draft contract plans into the final construction fell outside of the base contract scope as indicated by State Letters #150 and #180. Compensation for those detail changes was not addressed in any CCOs executed prior to the execution of CCO#29 on December 2, 2005.

Similarly, other contractual issues that were not handled in CCO#29 were the Isolation Material Spec Change that was later handled in CCO#30 and the PJP-UT Change that was handled in CCO#31.

Further, the official accounting records for CCO#29 clearly indicate that there is an absence of money allocated to offset the potential cost and time associated with such changes.

KFM, therefore, believes this work is compensable under Standard Specification Section 4-1.03D, "Extra Work" and requested compensation for such in KFM letter #172. State letter #2958, received on March 13, 2007, denied our request and thereby prompted the filing of this Initial Notice of Potential Claim in accordance with Specification 0-1.04, "Notice of Potential Claim."